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CASE & COMMENT

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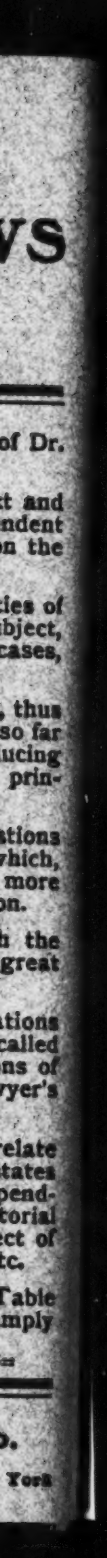

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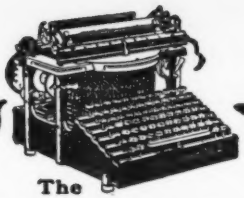

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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 12. AUGUST, 1905. NO. 3.

CASE AND COMMENT

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THE LAWYERS' CO-OPERATIVE PUB. CO.,
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NEW YORK, 81 Nassau St. CHICAGO, 225 Dearborn St.

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The End of the Hooker Case.

The prophecies of the newspapers as to the outcome of the proceedings in the New York legislature for the removal of Judge Hooker have proved to be well founded. A vote of less than two thirds of the assembly in favor of the removal ended the case, so that it did not get as far as the senate. The vote was 76 for removal and 67 against. A majority of the Republicans voted in favor of the accused judge, while less than a quarter of the Democrats voted for him. For some time past the newspaper men at Albany have been telling that powerful political influences were at work in his favor, and would doubtless succeed. It has been noticeable that those who have been predicting the failure of the proceeding have based their opinions, not upon any serious difference of views among the members of the legislature as to the facts or law of the case, but upon the potency of political influence. The result, unfortunately, seems to show that they understood the matter.

The facts of the case are unusually simple and almost entirely free from dispute. They show that the accused procured the appointment, to sinecure positions in the Fredonia postoffice, of a number of persons who did nothing but draw their salaries, and that the government was thereby defrauded; that one of these persons was a man on whose note the wife of the judge was an indorser, and another was a nephew of the judge, who was attending school while drawing his salary from the government. The only fact in dispute is as to the guilty knowledge or motive of the judge in procuring these appointments. His defense is that he did not know that the appointees were not needed in the postoffice, or that they were not expected to perform services. Remembering that this postoffice was in a country village, in which the judge himself resided and had the intimate acquaintance with its people which inevitably comes to a politician after many years' management of its political affairs, it is obvious that his knowledge of the needs and the personnel of the postoffice was necessarily almost as intimate as it was with the affairs of his own household. The gist of the defense is that this skilful and veteran politician, in loading the payrolls of his home postoffice with a considerable list of persons who were not needed and who did not make even a pretense of performing the services for which they were paid, was merely their victim and tool. Those who believe that, after many years of shrewd and successful political experience, the judge was victimized in this way by his schoolboy nephew and other clerks and laborers, will deem him innocent. It is noticeable, however, that the minority

of the assembly who voted against his removal showed little inclination to face this specific question of fact on which his innocence depended. The most conspicuous speech made on behalf of the judge during the vote virtually admitted his guilt, but said that the legislature could well afford to say, "Go and sin no more."

The law of the case is now at least past doubt. Some members of the legislature have based their opposition to the removal of Judge Hooker on the ground that it would interfere with the independence of the judiciary. This was a practical refusal to recognize the authority explicitly conferred by the Constitution of the state. But the legislature has nevertheless proceeded with the hearing, and carried it through to a determination. It is the first instance of the exercise of this authority to take legislative proceedings for the removal of a judge; and while the necessary two-thirds majority in favor of removal was not obtained, the case stands clearly as a precedent for the exercise of such authority. That such power of removal for cause includes the power to remove for moral unfitness, as well as for judicial misconduct, is also settled by this case, though it was, by the terms and history of the Constitution, beyond doubt even before this case was acted upon.

The reasons which governed the minority of the assembly in voting against removal in this case were probably somewhat various, and in some cases perhaps mixed. That political influences were secretly but powerfully operative to shield the accused is beyond doubt. Possibly some believed that Judge Hooker had been a mere tool of his youthful nephew and the other clerks and laborers for whom he got appointments in the Fredonia postoffice. Evidently some who had not been themselves too scrupulous in their political practices wished to discourage investigations of this sort. Some, it may be, who feared no investigation of their own methods, felt that the removal of Judge Hooker, even though they believed him guilty, would be too severe a punishment, considering the fact that so many other men no less guilty were occupying honored positions, unpunished if not unsuspected. This was brought out in one of the speeches in his behalf, which declared that Justice Hooker represented a system for which the people were responsible, and that it was not right to single out one individual and sacrifice him. It seems obvious, therefore, that the minority voters acted less on the theory that the judge was innocent than on the theory that he was no worse than many others.

The contention that it was unfair to single out Judge Hooker for punishment because so many others had done the same things without punishment fallaciously assumed that the others had been discovered and proved guilty. It amounted to a contention that, when the majority of those who are guilty of graft or similar secret crimes escape detection the few who are caught must also go free of penalty.

The failure of the attempt to remove the judge leaves him in an unenviable position. A majority of the assembly have voted that he is guilty, and the minority who voted against his removal quite failed to show that even all of them believed him innocent. Some of the speeches made on his behalf in the state bar association and in the legislature impliedly admitted that the charges against him were true, when they argued that others were no less guilty.

The unfitness of a legislative body to act in a judicial capacity is sharply illustrated not only by the Hooker case, but also by the recent Swayne impeachment case. An analysis of the vote in each instance shows, by the extent to which the division was on party lines, that political considerations were potent factors in determining the result. While some power to remove a judge for unfitness is a valuable one to be held in reserve in order to relieve the people from an intolerable situation that may arise, it is obvious that legislative bodies are peculiarly unfit to exercise it until they are less dominated by the illicit influences of politics.

Responsibility of the People for Graft.

The contention that there is a system of political graft for which the people are responsible, which was made by a defender of Judge Hooker in the New York assembly, is a remarkable one to come from a politician and legislator. The boldness by which the defenders of Judge Hooker in the state bar association and the legislature have asserted the prevalence of such political practices by politicians, office holders, and even by the judges, is almost incredible.

Though such a contention is specious and contemptible as a plea for the immunity of a politician charged with such graft, it is startling as an open declaration of the prevalence of corrupt political practices, made by politicians and officials who would ordinarily be quick to deny any such assertion.

The claim that the people are responsible for such a system of graft is true in the same sense that they are responsible for all crimes and evil conditions. They are responsible for it because they have not exterminated it. This is because such corruption is usually concealed, and not discovered, or at least not proved. Moreover, politicians and office holders have been altogether too prone, in their public utterances at least, to deny that such practices are prevalent. When the people at large know that corruption exists, they are not slow to insist upon its punishment. The people are, however, more directly responsible for a system out of which political graft grows as a natural product. It is the system of treating government appointments as political perquisites, and, to a large extent, of treating elective offices as benefits to be conferred upon the office holders. There is a widespread and persistent tendency among the voters to consider the claims of office seekers rather or more than the good of the public service. The pernicious notion that the offices are rewards or prizes for the office holders has made many voters very tolerant of political practices which increased the value of these prizes. The spirit of partisanship in the case of most minor offices has nothing to do with public policies, but only with the value of the offices to the incumbents and their friends. In this sense and to this extent the people have been and still are responsible for the conditions which breed political graft.

That Justice Hooker if guilty, as a majority of the assembly considered him, did only, though more extensively and boldly, what many another politician and office holder has done, must be conceded. If he had not got upon the bench, probably no proceedings against him would have been taken. But the temper of the American people with respect to public grafters is at this moment aroused and determined. We may hope that not only judges but congressmen, legislators, and officers of every kind and degree, will be held hereafter to far more rigid accountability for honesty and official honor. This will inevitably come when the common sense of the nation clearly grasps and puts into practical effect the idea that officers are public servants who are to be held accountable as such for faithful and honest service, and that they are not merely the prize winners of politics. This notion that the offices belong to the politicians, though not often expressly avowed, has greatly influenced the attitude of the people. But the astounding revelations of graft among officers, high and low, Federal, state, and municipal, are bringing home to the people as never before the pernicious effects of this theory. There is hope that the lesson may be effective, and that the old maxim that "Public office is a public trust" will hereafter be regarded not merely as a campaign slogan, but as the plain, businesslike, working principle in all public affairs.

Municipal Redemption.

The reckless and often mendacious charges of corruption made by partisan newspapers against officials of the opposite party have had the unfortunate effect of making the American people slow to believe the real extent to which grafting has been carried on, especially in our great cities. Too many of those who became aware of the truth in this respect settled down to the belief that there was no way to prevent it. But certainly a distinct turn in affairs has begun. The exposures of municipal corruption that have been almost constantly described in our magazines for the past few years, the great number of earnest and strong appeals that have been made in journals of high and low degree to arouse the people on this subject, have gradually compelled the public to understand the enormity of the corrupt practices that have been carried on, and to recognize the individual responsibility of citizens for their overthrow. In this particular matter, no other person has probably accomplished so much as Theodore Roosevelt. In the years before he became President, and after his striking personality, his bold defiance of politicians, newspapers, and what seemed to be overwhelming public sentiment in New York city, his rigid enforcement of law, and his conspicuous part in the war with Spain, had made

even the newsboys and the bootblacks on the street read with the keenest interest anything he said, he kept hammering away, in his forceful style, in almost every address he made to chambers of commerce, to agricultural societies, to popular audiences of every conceivable kind, upon the duty of citizens to be earnest and active in caucuses and elections to secure honest and faithful officials. It was not that what he said was different from what many other men said, but he got the hearing which other men could not get. All the influences have been at work, until the people are roused to demand honesty in public affairs as they have not been in many years before. The prosecution of grafters in the Federal service and in the state service, and especially in municipal service, has already reached large proportions. The recent developments in Philadelphia are remarkable in view of the fact that, in spite of the unsavory reputation of politics in that city for a generation, the political organization in power has kept so well intrenched that all efforts to overthrow it have seemed to be easily met hitherto. The remarkable experiences of New York, of Minneapolis, of St. Louis, and of other cities have certainly stimulated hope that we may by and by redeem the cities from the unspeakable corruption that has so long characterized some of them.

A leading newspaper of very striking partisanship says, under the caption, "Where the Blame Lies," that "grafters and grafting exist solely by favor of the 'good' citizens who are too lazy or too stupid or too top-lofty to take an intelligent interest in the management of the city's business." That such citizens have no small share of responsibility is certainly true. But the citizens and the newspapers who take an interest, but primarily a partisan interest, in politics, are, after all, those who are chiefly responsible for this condition. In every city where corruption in municipal affairs exists the class of citizens who are most of all responsible for it consists of those who, by reason of their financial interests, either because they fear to offend the bosses, or because they have a hope of illegitimate profits through their favor, constitute the most powerful supporters and protectors of a political machine under whom the grafting flourishes. Many of the newspapers which speak so contemptuously of "good" citizens who neglect political matters are well known to be, for business reasons, dominated by bosses in all political matters. Intelligent citizens have nothing but contempt for the newspapers of this class. The blame for dishonest conditions in cities does not all rest on any one class of citizens, but by far the heaviest part of it rests on those intelligent and professedly honest people whose business interests make them subservient to a partisan organization which they know does not stand for the public welfare.

Index to New Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 68, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

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Among the New Decisions.

Action.

See ALIENS; BILLS AND NOTES.

Aliens.

That a nonresident alien is the sole heir of a resident alien killed through negligence, and will receive the benefit of a recovery for his death, is held, in Romano *v.* Capital City Brick & P. Co. (Iowa) 68 L. R. A. 132, not to defeat an action by his administrator to recover damages for the death, under a statute providing that all causes of action shall survive, and that damages recovered for a wrongful act producing death shall be disposed of as personal property belonging to the estate of deceased.

Appeal.

See TIME.

Automobiles.

See HIGHWAYS.

Banks.

The drawee of a draft upon which the in-

dorsement of the payee and his signature to a bill of sale on the back, which is the consideration of the acceptance of the instrument, are forged, who pays it in ignorance of the forgery, upon its presentation bearing the indorsement of the collecting bank, is held, in La Fayette *v.* Merchants Bank (Ark.) 68 L. R. A. 231, to be entitled to recover back the proceeds from the bank as money paid under mistake.

Bills and Notes.

See also BANKS.

The provisions of a mortgage securing a contemporaneous note, which merely relate to the preservation of the security, are held, in Thorpe *v.* Mindeman (Wis.) 68 L. R. A. 146, not to be made a part of it so as to destroy its negotiability, by the rule that contemporaneous instruments relating to the same subject-matter are to be construed together.

Where a promissory note is sued upon by the holder, to whom it has been unconditionally assigned by the payee, it is held, in Greene *v.* McAuley (Kan.) 68 L. R. A. 308, that a complete defense on the sole ground that the plaintiff is not the real party in interest can only be established by proof of facts showing that a payment to him would not be a protection to the defendant against further liability on the note.

Burglary.

That burglary may be committed by the owner of a horse in feloniously breaking and entering into a livery stable where it is kept, for the purpose of removing it and depriving the stable keeper of his lien upon it for food and care, is held in State *v.* Nelson (Wash.) 68 L. R. A. 283.

Carriers.

A passenger who is injured by falling on a small, smooth patch of ice frozen to the deck in the passageway of a ferryboat in ordinary winter weather is held, in Rosen *v.* Boston (Mass.) 68 L. R. A. 153, to have a prima facie right to hold the ferry company liable therefor.

Placing a car of lumber upon the team track, to be conveniently unloaded by the consignee, is held, in Southern R. Co. *v.* Lockwood Mfg. Co. (Ala.) 68 L. R. A. 227, not to be such an absolute delivery of the property into his possession as to cut off the carrier's lien for subsequent demurrage charges accruing while the lumber remains upon its car.

A railroad company whose employees in charge of the train knowingly permit a person who is beastly drunk to go out alone upon the platform of a moving car is held, in Fox *v.* Michigan C. R. Co. (Mich.) 68 L. R. A. 336, to be liable for injury caused by his falling from the platform.

Constitutional Law.

A statute avoiding a sale in bulk of a stock of goods unless certain steps are taken, in favor of persons who have sold goods or loaned money for continuance of the business, and rendering the vendee liable to pay their claims, is held, in McKinster *v.* Sager (Ind.) 68 L. R. A. 273, to be void as denying the other creditors equal protection of the laws.

The contract rights of the creditor of a corporation who has brought an action against a stockholder to enforce his statutory double liability for his own benefit, as authorized by statute, are held, in Miners' & Merchants' Bank *v.* Snyder (Md.) 68 L. R. A. 312, not to be unconstitutionally impaired by the enactment of a statute requiring all creditors to unite in one suit against all stockholders for equitable distribution of the double liability fund among the creditors, and abating pending actions under the former law.

Contempt.

That the cause is ended is held, in Burdett *v.* Com. (Va.) 68 L. R. A. 251, not to prevent the punishment of a party for contempt in publishing an article charging the judge with misconduct during its trial, which consists in scandalizing and defaming the court itself.

Contracts.

An acceptance of an offer to sell crude oil of 15 degrees gravity, with the added stipulation that it must be of that gravity at 60

degrees Fahrenheit, is held, in Four Oil Co. v. United Oil Producers (Cal.) 68 L. R. A. 226, not to be sufficient to constitute a binding contract.

Coroners.

See EVIDENCE.

Corporations.

See CONSTITUTIONAL LAW; LIMITATION OF ACTIONS; TAXES.

Criminal Law.

The mere extrajudicial confession of an accused is held, in Bines v. State (Ga.) 68 L. R. A. 33, not to be sufficient to establish the *corpus delicti*.

Damages.

Although a tuberculous condition of the knee of a person whose leg was injured by another's negligence develops because tuberculosis was organic in the injured person, or because of mistakes in treatment, it is held, in Chicago City R. Co. v. Saxby (Ill.) 68 L. R. A. 164, that it cannot be said that it was not the consequence which might not naturally follow as a result of the injury, and that therefore the negligent person may be held liable therefor.

The value of the land taken, together with the damage to the abutting lots, and not the damage for the additional burden, is held, in Suffolk & C. R. Co. v. West End Land & Imp. Co. (N. C.) 68 L. R. A. 333, to be the compensation to be awarded for condemnation of a street by a railroad company for a right of way.

Deeds.

A present estate vesting at the time of delivery of the deed, but taking effect in possession at the death of the father and mother, is held, in Hunt v. Hunt (Ky.) 68 L. R. A. 180, to be conveyed by the grant by the owner of land and his wife to their child in an instrument authenticated as a deed, and containing words of present grant and covenants of warranty, although it provides that "this deed is not to take effect until the death of" the grantors.

Provisions in a deed, that the house shall set back a certain distance from the street, and not extend beyond a specified depth, so as to correspond to grantor's adjoining house, and that the elevation, material, and plan shall also correspond with such house, so as to form one building, are held, in Welch v. Austin (Mass.) 68 L. R. A. 189, not to be personal to the parties, but to apply in favor of their successors in title so long as the house first built on the granted premises stands.

Eminent Domain.

See DAMAGES.

Evidence.

A letter written by an accused to his wife and intercepted in transmission is held, in Hammons v. State (Ark.) 68 L. R. A. 234, to be admissible against him.

A finding by a coroner's jury, that a person came to his death by a wound inflicted by himself with suicidal intent, is held, in Ætna Life Ins. Co. v. Milward (Ky.) 68 L. R. A. 285, not to be admissible in an action upon a policy of accident insurance upon his life.

Ferries.

See CARRIERS.

Fraud.

A creditor of one who sells his stock of goods in bulk without complying with the provisions of the statute regulating such sales is held, in Rothchild Bros. v. Trewella (Wash.) 68 L. R. A. 281, to have no right to maintain a direct action against the vendee to recover the amount of his claim, where the statute merely declares the sale void, without making any provision for an action against the vendee.

Gift.

The drawing of a check for part of a fund on deposit, by one under the fear of impending death, and delivering it to the drawee with directions to forward it to the bank, accompanied by a statement that the amount is to become the property of the drawee in

case of the drawer's death, is held, in *Re* Collins (Wash.) 68 L. R. A. 119, to be a sufficient gift *causa mortis* to prevent an escheat to the state.

Good Will.

The sale of the good will of a partnership at the instance of the personal representative of the deceased partner, as part of the firm's assets, is held, in Hutchinson *v.* Nay (Mass.) 68 L. R. A. 186, not to preclude the surviving partner from entering into a competing business and soliciting trade from the customers of the old firm.

Highways.

Failure of municipal officers to display danger signals to warn travelers, upon leaving an obstruction in a highway over night, is held, in Collier *v.* Fort Smith (Ark.) 68 L. R. A. 237, not to render the municipality liable at common law for injuries to a traveler resulting therefrom.

A statute limiting the speed of automobiles throughout the state, on public highways, streets, and ways, is held, in Com. *v.* Crowninshield (Mass.) 68 L. R. A. 245, not to abrogate rules as to their speed in parks, made by the commissioners under proper authority.

Owners of property whose only access thereto is by means of a public square are held, in Borghart *v.* Cedar Rapids (Iowa) 68 L. R. A. 306, to have a right of action against the municipality in case the square is vacated and the means of access cut off.

Homestead.

The marriage of an infant in whom a homestead has vested upon the death of the original homesteader as his surviving family is held, in Jones *v.* Crawford (Ky.) 68 L. R. A. 299, to terminate the homestead right under a statute providing that, upon the death of the homesteader, the homestead shall be for the use of the widow so long as she occupies it, and that the unmarried infant children of the husband shall be entitled to a joint occupancy with her.

Homicide.

One on trial for murder perpetrated in carrying out a conspiracy to rob is held, in People *v.* Lawrence (Cal.) 68 L. R. A. 193, to have no right to object to the use of the language, "even if he did not intend to take life, and regretted that it was done," in an instruction that he was guilty of murder if one of the party killed a person in carrying out the conspiracy.

Incompetent Persons.

The surrender of the bulk of his property by a man who has become mentally infirm, for the benefit of the children of his divorced wife, to secure the withdrawal of proceedings by the wife to place him under guardianship, is held, in Foote *v.* De Poy (Iowa) 68 L. R. A. 302, to be properly set aside.

Injunction.

A mandatory injunction to compel the removal of dams which have wrongfully diverted water on to plaintiff's property, the effect of which will be to destroy trees and cut gulches, is held, in Allen *v.* Stowell (Cal.) 68 L. R. A. 223, to be properly awarded, although plaintiff has not established his right to damages by a verdict of jury or finding of court.

The right to an interlocutory injunction against owners of land over a large subterranean reservoir of mineral water which comes to the surface in valuable springs on neighboring property, to prevent them from pumping the water from the reservoir through wells dug on their own property, and letting it run to waste for the purpose of injuring the owner of the springs, which have been utilized for commercial purposes, is sustained in Gagnon *v.* French Lick Springs Hotel Co. (Ind.) 68 L. R. A. 175.

Insurance.

A forfeiture of insurance for failure to keep and produce books is held, in American Cent. Ins. Co. *v.* Nunn (Tex.) 68 L. R. A. 83, not to be waived by an examination of the insured under oath, with knowledge of loss, which puts him to some expense, where the policy expressly provides that the insured shall submit to examination under oath, and that the company shall not be held

to have waived any forfeiture under the policy by an examination so provided for.

The sending of the renewal receipts by an insurance company upon receiving a bank draft to its order for the premium, which is sent according to its directions, after inquiry as to remittance by the insured, is held, in MacMahon *v.* United States Life Ins. Co. (C. C. A. 5th C.) 68 L. R. A. 87, to constitute a renewal of the insurance for another period, which cannot be repudiated by the insurer upon the dishonor of the draft because of failure of the drawer after the draft has been received by it.

Getting shingle bolts to the mill, selling and shipping shingles therefrom, and placing some shingles in the dry kiln without turning on the steam, are held, in Brehm Lumber Co. *v.* Svea Ins. Co. (Wash.) 68 L. R. A. 109, not to be an operation of the mill when the machinery is stopped, so as to prevent the operation of a clause in an insurance policy making it void if the property is shut down or idle for more than thirty days without permission.

Intoxicating Liquors.

A person who, in connection with his saloon, has been running a gambling house, which he knows to be contrary to law, but which has not been interfered with by the police officers because of his payment of periodical sums as fines, is held, in Whissen *v.* Furth (Ark.) 68 L. R. A. 161, not to possess the good moral character necessary to receive a liquor license.

Liens.

See MORTGAGE.

Limitation of Actions.

The superadded liability imposed by the Constitution upon stockholders in an insolvent bank is held, in Bennett *v.* Thorne (Wash.) 68 L. R. A. 113, to accrue at the time of the insolvency of the corporation, so as to start the statute of limitations running against it at that time, and not at the time the receiver exhausts the assets of the corporation, or when the court orders him to proceed against the stockholders.

Taxpayers of a county are held, in Johnson *v.* Black (Va.) 68 L. R. A. 264, not to be bound to examine the books of the supervisors to discover illegal appropriations of money, in order to prevent a suit by them to compel restoration of money illegally withdrawn, brought within a reasonable time after the facts are discovered, from being barred by laches.

Master and Servant.

A mine owner is held, in Fulton *v.* Wilmington Star Min. Co. (C. C. A. 7th C.) 68 L. R. A. 168, not to be exempted from liability for the negligence of his manager by the fact that he is forbidden by statute to employ anyone in such capacity but those who have received a certificate of competency from the state examiners.

A railroad company is held, in Kentucky & I. Bridge & R. Co. *v.* Snydor (Ky.) 68 L. R. A. 183, to be liable for injuries to a car repairer by propelling cars against the one under which he was working, notwithstanding his neglect in failing to place his signal flag in the best position, if those in charge of the train by the exercise of ordinary care might have discovered the flag, where it was placed in time to avoid the injury.

That an employer cannot be relieved from the consequences of his neglect in providing unfit material for the construction of a staging, which results in the death of his employee, by the fact that the staging was constructed by another employee who had the power to reject material not fit for the purpose to which it was applied, is held in Farrell *v.* Eastern Machinery Co. (Conn.) 68 L. R. A. 239.

In an action against an employer for injuries to an employee through the fall of staging upon which he was working, because of the use of defective boards improperly selected, upon which to rest the timbers supporting the staging planks, it is held, in Solari *v.* Clark (Mass.) 68 L. R. A. 243, that a verdict cannot be directed for the defendant where there is evidence from which it can be found that it was the duty of the superintendent in charge of the men not to allow the staging to be used until he had exercised due diligence to see that it was properly assembled and secured, and that the accident resulted from his failure to perform this duty.

Mines.

See MASTER AND SERVANT.

Mortgage.

A mortgagee of land who holds an invalid tax certificate of purchase under an attempted sale for taxes assessed against the land after the execution of the mortgage, when there was personal property from which the tax might have been collected, is held, in Dixon *v.* Eikenberry (Ind.) 68 L. R. A. 323, to lose his right to enforce his claim for the taxes which the certificate represents, against the purchaser at the foreclosure sale, if he forecloses his mortgage without setting up the claim.

Municipal Corporations.

See also HIGHWAYS.

An ordinance obligating the city to raise each year $1,000 to maintain a library in case it is donated to the city is held, in Ramsey *v.* Shelbyville (Ky.) 68 L. R. A. 300, to create an obligation beyond the revenue for the year, within the meaning of a constitutional provision forbidding such indebtedness without the assent of the voters.

Negligence.

See also DAMAGES.

A manufacturer of champagne cider, which is ordinarily not dangerous, is a common article of commerce, and is manufactured by him by proper machinery, and not excessively charged, is held, in O'Neill *v.* James (Mich.) 68 L. R. A. 342, not to be liable for injuries to an employee of his customer through the explosion of a bottle, unless he knows that for some reason such bottle is peculiarly liable to such accident.

The negligence of the driver of a fire engine in colliding with a street car is held, in McKernan *v.* Detroit Citizens Street R. Co. (Mich.) 68 L. R. A. 347, not to be imputable to a fireman engaged in his duties upon the engine, so as to defeat a recovery for injuries caused by the negligence of the car company.

New Trial.

The power of a trial court to grant, within the period allowed by statute, a new trial for newly discovered evidence, is held, in Chambliss *v.* Hass (Iowa) 68 L. R. A. 126, not to be cut off by the fact that the judgment has been affirmed on appeal and execution returned satisfied.

Partnership.

See GOOD WILL.

Railroads.

See DAMAGES.

Sale.

The vendor of a machine the title to which is not to pass until the price is paid is held, in National Cash Register Co. *v.* Hill (N. C.) 68 L. R. A. 100, to be entitled, in case of the refusal of the purchaser to accept it, to sue for the purchase price, and not to be bound to take steps to protect himself or preserve the value of the property, and sue merely for the difference between the contract price and the value of the machine.

Seduction.

A prosecution for seduction is held, in State *v.* O'Hare (Wash.) 68 L. R. A. 107, not to be defeated by the fact that the woman yielded under a conditional promise of immediate marriage in case she got into trouble, under a statute providing punishment in case any person seduces and debauches an unmarried woman of previously chaste character.

Taxes.

A charter right to exemption from taxation is held, in Lake Drummond Canal & Water Co. *v.* Com. (Va.) 68 L. R. A. 92, not to pass by a statutory provision that, in case of the foreclosure of a mortgage on corporate property, and a sale of the property thereunder, all the franchises, rights, and privileges of the mortgagor company shall pass to the mortgagee.

Time.

In computing the time for taking appeals

under a statute excluding holidays from the number of days specified, it is held, in Ocumpaugh *v.* Norton (D. C. App.) 68 L. R. A. 272, that half holidays established by law should be taken into account, and their aggregate added to the time shown by the calendar.

Trusts.

The failure to perform an oral promise made by the sole heir at law of one desiring to dispose of her estate by will to third persons, that he will dispose of her estate as she desires, is held, in Cassels *v.* Finn (Ga.) 68 L. R. A. 80, not to make the heir at law of the promisor, in case of intestacy, a trustee *ex maleficio* as to the property inherited by him, in the absence of actual fraud.

Waters.

See also INJUNCTION.

Overflow waters of a natural stream in times of ordinary flood or freshet, flowing over or standing upon the adjacent lowlands, are held, in Uhl *v.* Ohio River R. Co. (W. Va.) 68 L. R. A. 138, not to be surface waters, and not to cease to be part of the stream unless and until separated therefrom so as to prevent their return to its channel.

Wills.

Honest and moderate intercession or persuasion, unaccompanied with fraud or deceit, and where the testator has not been threatened or put to fear by the flatterer or persuader, is held, in Kennedy *v.* Dickey (Md.) 68 L. R. A. 317, not to be such undue influence as will annul a will.

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